IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.14418 of 2005

Between:

M/s. K.S. Biyani & Co., rep. by its Proprietor Satyanarayan Biyani,
S/o. Late Kishanlal, Begum Bazaar, Hyderabad.

..... PETITIONER

AND

1. The Authority for Advance Ruling under APVAT Act, O/o. The Commissioner of Commercial Taxes, Commercial Tax Complex, M.J.Road, Hyderabad-500 001.
2. The Commercial Tax Officer, Bugum BAzaar Circle, Hyderabad.

… RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, particularly in the nature of Writ of Mandmaus declaring the commodity namely katha (kasu) which is technically or scientifically or botanically called as khair wood as one of the spices to be taxed @ 4% in terms IVth Schedule to the APVAT Act, 2005 in CCTS Ref.No.PMT/P&L/AR.COM/99/2005 as arbitrary, improper, unjust and misconceived and direct the IInd respondent herein to levy and collect sales tax under the VAT Act, on sale of the commodity @ 4% as applicable to spices and grant such other relief or reliefs as are deemed to be fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. M.V.J.K.KUMAR

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

The Court at the admission stage made the following :

ORAL ORDER:

(per Honourable Sri Bilal Nazki, the Acting Chief Justice)

This is a writ petition challenging the order of the Authority for Clarification and Advance Rulings. The writ petition has been filed on the sole ground that the order of Authority for Clarification and Advance Rulings created under Section 67 of the A.P. Value Added Tax Act 2005 is not appealable. The Authority while passing the impugned order has stated in a note appended to the order that the appeal against these proceedings can be filed before the A.P. Sales Tax Appellate Tribunal within thirty days of this ruling.

The learned counsel for the petitioner submits that such a note would not confer jurisdiction on the Sales Tax Appellate Tribunal, A.P., Hyderabad, as the statute does not make such orders appealable. He refers to Section 33 of the A.P. Value Added Tax Act 2005. This Section lays down that the dealer may file appeal in cases specified under Section 33, and the learned counsel would contend that an order under Section 67 of the Act is not mentioned in Section 33. It appears that Section 67 is part of Chapter IX of the A.P. Value Added Tax Act and is part of general provisions of the Act. After a bare perusal of the Section, it appears that it lays down the complete mechanism as far as the Authority for Clarification and Advance Rulings is concerned. It is constituted under Section 67 (1) by the Commissioner and an application can be entertained by it under sub-section (2) of Section 67 and sub-section (3) lays down that the order of the Authority would be binding on the applicant who seeks the clarification. It would also be binding on all officers other than the Commissioner and the order passed under sub-section (2) of Section 67 on the motion of a dealer himself would be final unless an appeal is filed before the Sales Tax Appellate Tribunal within thirty days of the ruling in the manner prescribed. The proviso to sub-section (4) of Section 67 makes it abundantly clear that any order passed by the Authority under Section 67 is appealable before the Sales Tax Appellate Tribunal and the appeal must be filed within the period of thirty days of the ruling.

For these reasons, we do not find any merit in the writ petition. It is accordingly dismissed. However, the petitioner is at liberty to file an appeal before the appropriate forum.

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BILAL NAZKI, ACJ

5.7.2005.

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G.CHANDRAIAH, J.

ARS

Note:

Issue cc within two days.

(BO)

L.R.COPY BE MARKED.

To

1. The Authority for Advance Ruling under APVAT Act, O/o. The Commissioner of Commercial Taxes, Commercial Tax Complex, M.J.Road, Hyderabad-500 001.
2. The Commercial Tax Officer, Bugum BAzaar Circle, Hyderabad.

3. Two CCs to Government Pleader for Commercial Taxes, High Court Buildings, Hyderabad (OUT).

4. Two CD copies.